

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6213 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANGILAL AMBALAL SAWARIA

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

Mr H L Jani, APP for Respondent No. 1, 4

Mr B T Rao, Addl. Central Government Standing Counsel
for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 08/10/98

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 14.4.1998 passed by the District Magistrate, Baroda in exercise of powers under section 3(2) of the Prevention of Black

Marketing Activities Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene (S.K.A.O) and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene (S.K.A.O) essential to the community. It appears from the grounds of detention that the petitioner-detenu is a licence-holder and running a kerosene distribution shop in the city of Baroda. It is also alleged that the District Magistrate, Baroda with other officers in the presence of the Minister concerned, raided the shop of the detenu on 11.4.1998 and at that point of time, statements of Rameshbhai Laxmanbhai Chauhan and Jubedaben Sattar Memon were recorded and it was found that the said witnesses were card holders and the detenu alleged to have sold kerosene to the said witnesses at a higher price than the market price and thus for personal gains and economic profit, the detenu had committed illegality and indulged in prejudicial activities to the maintenance of supplies of essential commodities. It also appears that the stock register of the detenu was seized and verified, and there also the verification officer found deficit of 40 litres of Kerosene.

2. Challenging the order of detention, Mr Anil S Dave, learned Advocate contended that there is considerable and unexplained delay in deciding the effective representation made by the petitioner under Article 22(5) of the Constitution of India which has made the continued detention illegal. It is submitted that the detenu made representation dated 23.7.1998 addressed to the Civil Supplies Minister, Government of India, New Delhi which was received in the office of the Ministry i.e. the Ministry of Civil Supplies, on or before 30.7.98 as is evident from the Registered A.D. receipt which bears the postal stamp dated 4.8.98. However, the representation was decided as late as on 9.9.1998.

3. Affidavits have been filed by Mr P D Shah, Under Secretary to the Government of Gujarat, Food Civil Supplies and Consumer Affairs Department, Mr A G Mukim, District Magistrate, Vadodara, the detaining Authority, MR KVS Rao, Under Secretary in the Ministry of Food & Consumer Affairs, New Delhi. An additional affidavit dated 17.9.1998 has also been filed by Mr P D Shah, Under Secretary to the Government of Gujarat. A Counter-affidavit dated 5.10.1998 has been filed by Mr Kamal Kishore, Economic Adviser in the Department of Consumer Affairs. In the last affidavit filed by Mr Kamal Kishore, it is stated that the representation dated 23.7.1998 addressed to the Hon'ble Minister of State,

Food and Consumer Affairs, Shri Satyapal Singh Yadav was received in the concerned section on 24.8.98. After considering the contents of the representation, it was felt necessary that the parawise comments of the State Government on the representation be called for and, therefore, the parawise comments were called vide telegram dated 24.8.98 and 3.9.98. Parawise comments were received in the concerned section on 8.9.98. After considering the representation along with the parawise comments of the State Government, and other relevant records, the case was rejected by the competent authority in the Central Government on 9.9.98. The decision of the Central Government was conveyed to Superintendent, District Jail, Jamnagar on 9.9.98 by telegram with direction to convey the same to the detenu.

3. The question arises for consideration in the present Special Civil Application is whether in the facts of the case, there is unexplained delay in deciding the representation by the Central Government.

4. Mr A S Dave, learned Advocate, in support of his contention, has relied upon various authorities. Before I deal with various authorities, it may be stated that the detenu addressed the representation to the Hon'ble Minister of the State Food and Consumer Affairs, by name i.e. Shri Satyapal Singh Yadav. The say of the respondent is that as the Hon'ble Minister was on long tour, the envelope could not be opened and as such there was delay and it could reach to the concerned section only on 24.8.98. Thereafter, the comments were called for from the State Government and the same was decided on 9.9.98 with promptitude. It is argued by the Additional Central Government Standing counsel that the representations are sent in the name of Ministers deliberately with a view to take advantage of delay in deciding the representation. It is also stated that repeatedly instructions have been issued that the representation be sent in the name of the Secretary, Department of Civil Supplies.

5. The first authority relied upon by the learned Advocate is Kavita v. State of Maharashtra & Ors., reported in AIR 1981 SC 1641. In the said case, the question was whether the Minister of State, Home Affairs, Government of Maharashtra could validly deal with the representation made by a detenu under Rules of Business. The said authority is of no assistance to the petitioner as there is no controversy with respect to the competence of the Hon'ble Minister to decide the representation in the instant case. In the case of Raghavendra Singh

v. Superintendent, District Jail, Kanpur, reported in AIR 1986 SC 356. there was enormous delay of 75 days in disposal of the representation by the Central Government. The representation was addressed to the President's Secretariat and the Prime Minister's Secretariat. The representations were received on 18th and 19th March, 1985 respectively. However, they were actually received in the Ministry of Home Affairs on May 25, 1985 i.e. after two months and six days. It was contended by the Addl. Solicitor General that the representation to the central Government should have been addressed to the Ministry of Home Affairs and not to the President or Prime Minister. It was submitted that the President or Prime Minister receive thousands of memorials and representations from every part of the country regarding a multitude of affairs and the representations could not be expected to be considered as expeditiously as they would be considered had they been addressed to the appropriate Ministry. The Court found that the explanation given may justify part of the delay, but it cannot justify the enormous amount of delay. The Court also found that in that case, no affidavit was filed to explain the cause for the delay in President's and the Prime Minister's Secretariat. The Court observed thus:

"Due allowance may be made for the time which may ordinarily be taken for forwarding the representation from the President's and the Prime Minister's Secretariats to the concerned Ministry, we are unable to say in the present case that there has been adequate explanation for the delay. In fact, no one has filed any affidavit to explain the cause for the delay in the President's and the Prime Minister's Secretariat."

The aforesaid case has been decided on its own facts which is not of any assistance to the petitioner in the instant case".

6. In Kundanbhai Dulabhai v. District Magistrate, reported in (1996) SC 1455, the representation dated 23.8.95 was received in the office of the Chief Minister on 25.8.95. However, it was disposed of on 12.9.95. The delay was explained by filing affidavit wherein it was stated that there were 40 to 50 applications pending disposal and they were taken up chronologically. The Court found that the representation was placed in a queue and was not given precedence over the other representations which did not relate to the order of detention. The Court said that chronology ought to have

been broken as soon as the representation was ready for disposal. Apart from this, the representation dated 2.9.98 made to the central Government could not be disposed of for want of comments from the State Government. The State Government did not offer its comments for over a month inspite of repeated reminders of the Central Government. This case is also of no help to the petitioner as it is not the case of the Central Government that the envelope was opened and that it was placed in common queue for deciding in chronology. The categorical case of the Central Government is that the representation was in the name of the Hon'ble Minister Shri Satyapal Singh Yadav and the same was not opened as the Hon'ble Minister was out of station. In the case of Kanjibhai H Rabari v. The State of Gujarat & Ors. reported in 1994 Cr.L.R. (Guj.) 464, the representation was made to the Hon'ble Chief Minister. A contention was raised by the learned APP that in the ground of detention it was specifically mentioned as to whom representation should be made by a separate annexure. So far as the representation to the State Government is concerned, it was addressed to Deputy Secretary, Home Department (Special-3), Gujarat Government, Secretariat, Gandhinagar. Thus, the question raised was that as the representation was not sent to the said authority, it cannot said to be a representation to the State Government. The Court found that the representation addressed to the Hon'ble Chief Minister was a valid representation. This case is of no help to the petitioner, as in the instant case, the controversy is not with respect to validity of representation to the Hon'ble Minister. The learned Advocate has also relied upon two unreported decisions of this Court. In Special Criminal Application No.716/94, representation was addressed to the Deputy Home Minister on 13.5.94. The representation remained unattended for about 12 days. It was pointed out that the department receives number of posts which may be even 1000 articles a day, and therefore, it is physically impossible to open each of the envelopes. On the facts of the case, the Court found the delay unjustified. In another unreported judgment in Special Criminal Application No.1775/93, the representation was sent by Fax on 1.3.94 to Telephone No.22101 which is the telephone number of the Hon'ble Chief Minister of the State of Gujarat. The representation remained unattended. The Court found that there was clear violation of fundamental rights guaranteed under Article 22(5) of the Constitution of India. In my view, this case is also of no assistance. In the instant case, the representation has been decided. The only question is as to whether the delay has been

explained or not.

7. On the other hand, Mr B T Rao, the Addl. Central Government Standing Counsel has argued that the delay ipso facto, will not be fatal if the same has been explained. He relies on a decision in the case of State of U.P. v. Shakeel Ahmedabad, reported in (1996) SCC 337. In that case, delay of 23 days has not been found fatal by the Apex Court. In the case of Kamlabai v. Commissioner of Police, reported in (1993) 3 SCC 384, the Apex Court held that the delay by itself is not a ground which proves to be fatal, if there is an explanation. The Court held that the short delay cannot be given undue importance having regard to administrative actions. The Division Bench of this Court in the case of Bharatkumar Ishwarbhai v. District Magistrate, reported in 1989 (2) GLH 312, while dealing with the question of delay, held that a pragmatic approach should be adopted and one should have an eye on the realities of life. The court observed thus:

"While examining the question with regard to delay in considering the representation by the appropriate authority one has to be pragmatic and one must have an eye on the realities of life. When it is stated that every day's delay should be explained this is required to be understood in pragmatic manner. Otherwise one may ask why not explain the delay of every hour and why not explain the delay minute by minute. All that is required to be seen is as to whether the authority had shown due promptness. Even while judging due promptness on the part of the authority concerned, the fact that the authority is working in the system where to work in tardy and prolonged fashion has become the rule of life."

Recently learned Single Judge of this Court M R Calla, J. in the case of Urmila Naresh Mittal v. Union of India, reported in 1998 (2) GLH 308, after reviewing almost all the cases on the point, observed that while dealing with the cases of preventive detention, balance has to be struck with regard to constitutional safeguards and importance of the national economy in the context of organized smuggling activities.

8. At this stage, the learned Advocate for the petitioner has cited a latest decision of the Apex Court in the case of Venmathi Selvam vs. State of Tamil Nadu, reported in 1998 SCC (Cr.) 1359. In the said case, three

weeks delay was found to be fatal. I have read the judgment. The Court has clearly observed that though the delay is not long, it has remained unexplained. The Court further observed that the delay by itself is not fatal, it is only the unexplained delay.

9. In the instant case, the petitioner chose to make representation to the Hon'ble Minister Shri Satypal Singh Yadav, by name. Obviously when the envelope is in the name of the Hon'ble Minister, it could not be opened by anybody else than himself or the person instructed by him. I do not approve the practice of sending representation to the high Constitutional functionaries such as the President of India or the Prime Minister of India, Home Minister, Chief Minister etc. more particularly by name. It is not that the representation is not required to be considered, but the question is if there is any delay in disposal, on account of that the same will not be fatal. If the detenu is interested in expeditious disposal of the representation, he must send the representation to the authority mentioned in the grounds of detention or in any case it should be addressed to the Secretary of the concerned Ministry. In the present case, as the representation was sent in the name of the Hon'ble Minister, and therefore. it could not be immediately opened. This delay has been explained. As soon as it was opened and read was sent to the concerned section. It was promptly dealt with, therefore, in my view, the delay in the present case has been properly explained.

10. In view of the aforesaid, I find no merit in this Special Civil Application and the same is accordingly rejected. Rule discharged.

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msh.